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FOIP FOLIO

SASKATCHEWAN

December 2006

As we reach the end of yet another year, all of us at the Office of the Information and Privacy Commissioner (OIPC) are grateful for the support we have received from many of you over the past twelve months. Our wish is that each of you and your families enjoy a wonderful Christmas holiday. We look forward to continue working with you and your organizations in the New Year.

JANUARY 17TH & 18TH VISIT BY PRIVACY COMMISSIONER GENERAL COUNSEL

We are delighted to report that **Patricia Kosseim**, General Counsel for the Privacy Commissioner of Canada (PCC), will be meeting with lawyers, FOIP Coordinators and Privacy Officers at Canadian Bar Association (CBA) Access and Privacy Section lunch hour presentations in Regina on January 17th and in Saskatoon on January 18th. This will be an excellent update on PIPEDA and highlighting of best privacy practices. If you haven't yet registered to attend these sessions, you are encouraged to call the CBA office at 244-3898 (Saskatoon) or 1-800-424-8288 or email to lorrainec@cba.org.

Patricia provides legal advice on a broad range of policy and legislative initiatives; represents the Commissioner before Federal Court and Parliamentary Committees; and directs research on emerging privacy issues. Before joining the PCC, Patricia spent five years at the Ethics Office of the Canadian Institutes of Health Research (CIHR) and was instrumental in the development of the excellent CIHR Privacy Best Practices instrument. Prior to CHIR, Patricia practiced law with Heenan Blaikie, a major national law firm in Montreal. She has a B.Com. and LL.B. from McGill University and a Master's Degree in Medical Law and Ethics from King's College in London, U.K.

APRIL 2007 IAPP CONFERENCES TO BE HELD IN REGINA

In our last edition of the FOIP FOLIO we informed you of an upcoming event, the **Prairie Health Information Privacy Day**, scheduled for Monday, April 16, 2007 in Regina. You may register for this event as early as December 22, 2006. More information on this conference is available at www.PHIPD2007.ca. For your ease of reference, the poster and agenda for this event are attached.

As the focus of the Prairie Health Information Privacy Day is understanding and complying with *The Health Information Protection Act* (HIPA), we wish to inform those of you that are bound by or otherwise impacted by *The Freedom of Information and Protection of Privacy Act* (FOIP) or *The Local Authority Freedom of Information and Privacy Act* (LA FOIP) of a second event being hosted also in Regina but on Wednesday, April 18, 2007. The goal of the **Saskatchewan Access and Privacy Conference 2007** is to put access & privacy at the forefront of the public sector across Saskatchewan. At the same time we want to provide an opportunity to enhance the skills of those working in government institutions and local authorities to comply with the applicable laws. For more information on this event, or to register, visit www.skaccess-privacy.ca.

We will advise you further as additional speakers and topics for both conferences are confirmed.

ABUSE OF PRIVACY DEALT WITH IN SK COURT OF QUEEN'S BENCH

On December 15, 2006 a corporation that operated a private investigation firm was fined $20,000 for fraudulently accessing police databases. The Saskatchewan Court of Queen's Bench heard that between September 1999 and April 2002 the private investigation firm accessed approximately 30 Canadian Police Information Centre (CPIC) files at a RCMP detachment. It is troubling that such a practice could be carried on for almost three years and was ultimately flagged for attention only after revelations in a court case in another province. This case underscores the importance of appropriate staff training, audit trails, and actual audits of personal information collection, use and disclosure practices in all organizations, particularly in police organizations. In our last three Annual Reports we have encouraged the Province to extend the FOIP/LA FOIP legislation to cover police services and municipal police commissions as is done in almost every other Canadian jurisdiction. Currently, only the RCMP are subject to access and privacy legislation, i.e. the federal *Access to Information Act* and the *Privacy Act*.

WHEN CAN YOU EXTEND THE 30 DAYS TO RESPOND TO AN ACCESS REQUEST?

In Report F-2006-005, the OIPC considered five separate cases where five different "government institutions" invoked section 12 to extend the time to respond to each access request by an additional period of up to 30 days. In only two of the five cases was adequate notice given to the applicant as to the reason why more time was required. The Commissioner held that if a government institution has not take reasonable steps to create the capacity to be able to comply with FOIP requirements, it cannot avail itself of the provision to extend the time to respond. Furthermore, all five government institutions failed to discharge the burden of proof in establishing that an extension was appropriate in each case. This new Report is available at www.oipc.sk.ca under the *Reports* tab.

A MODEL APPROACH TO PRIVACY IMPACT ASSESSMENTS (PIA)

The Canadian Institute for Health Information (CIHI) has just published on its website a series of six different PIAs for programs it operates including the Pharmacist Database, National Prescription Drug Utilization Information System and Home Care Reporting System. CIHI is modelling an impressive transparency by making these PIAs publicly available at www.cihi.ca.

BLOOD TRIBE DEPARTMENT OF HEALTH v. PRIVACY COMMISSIONER OF CANADA

A significant decision of the Federal Court of Appeal clarifies investigative powers of the federal Privacy Commissioner under the *Personal Information Protection and Electronic Documents Act* (PIPEDA). At issue was whether the Privacy Commissioner was entitled to compel the production of privileged documents in the course of an investigation. The Court of Appeal allowed an appeal and ruled that the Trial Judge erred in adopting a purposive and liberal interpretation of sections 12(1)(a) and (c) of PIPEDA. The Court of Appeal determined that express language was required to abrogate solicitor-client privilege. It is interesting to note that unlike the Saskatchewan FOIP Act or even the federal *Privacy Act*, there is no provision in PIPEDA that permits examination by the Commissioner of any information "notwithstanding any other Act or any privilege that is available at law" [FOIP s. 54(1)]. The decision can be found at 2006 FCA 334, October 18, 2006.

PROFESSIONAL OR JOB HOLDER: WHICH WILL YOU BE?

In every employment arena there are "professionals" and there are simply "job holders." The CAPA-CAPAPA Professional Standards and Certification Project (PSCP) has a stated goal of establishing Information Access and Protection of Privacy (IAPP) specialists as a recognized profession in Canada. The project will achieve this goal by developing professional standards, establishing a certification model and by recognizing a governance group capable of implementing the program.

The activities involved in this project bring professionalism for IAPP specialists into focus. It is imperative that individuals engaged in the field of access and privacy administration, federally, provincially, municipally or within the private sector, understand that the future of the profession depends on their adopting certain values and beliefs and practices. IAPP specialists deserve our energy and effort to establish and defend the practice field. When talking to IAPP specialists about their evolving profession a frequent question is, "what will professional standards and certification do for me?" In many professions the establishment of standards and certification results in membership in a professional organization and is considered as a hallmark for professional practitioners. Professional organization membership is the vehicle to recognition and empowerment of a profession.

Access and privacy administration is an exciting field. You have a choice to be simply a "job holder" or to accept the role of professional. If you choose to be a professional, acceptance of the established professional standards and certification will enhance your development; and as a member of a recognized association, you will promote recognition of IAPP specialists as a profession.

For further information about this national initiative contact:

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WHAT HAPPENS TO THE FILES WHEN A TRUSTEE SIMPLY CLOSES THE DOOR TO HIS PRACTICE?

Ontario Information and Privacy Commissioner, **Ann Cavoukian**, has just issued her Order HO-003 to answer that question for her province. This concerned the closure of a medical and rehab clinic in Etobicoke. All of the records containing personal health information (phi) were simply left behind. The Commissioner determined that the health information custodian (counterpart to our 'trustee') had failed to retain, transfer or dispose of the phi in a secure manner. Also, the custodian did not have information practices as required by PHIPA (counterpart to our section 16 of HIPA). For her findings and her Order go to www.ipc.on.ca.

BREACH NOTIFICATION ASSESSMENT TOOL

The Ontario and British Columbia Information and Privacy Commissioners have just co-produced a very interesting guide on providing notification to affected individuals when a privacy breach occurs. This can be accessed at www.oipc.bc.ca or www.iopc.on.ca. In Saskatchewan, notification may be advisable under HIPA, FOIP or LA FOIP when a breach occurs. The guide takes an organization through four decision-making steps regarding notification:

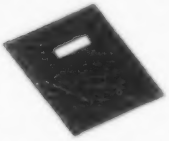
Step 1: Notifying Affected Individuals
Step 2: When and How to Notify
Step 3: What to Include in the Notification
Step 4: Others to Contact

The British Columbia OIPC has also developed a privacy breach reporting form. This is available at http://www.oipc.bc.ca/forms/Privacy_Breach_Form_(Dec_2006).pdf.

Ontario's *Personal Health Information Protection Act* (PHIPA) is the only Canadian privacy law that requires notification in the event of a breach. Notification is discretionary in Saskatchewan and other jurisdictions.

If a breach has occurred and you are uncertain whether notification is appropriate or not, we encourage you to call a Portfolio Officer at the OIPC to discuss what action would be appropriate in the circumstances.

OIPC REPORT RE: SASKATCHEWAN HUMAN RIGHTS COMMISSION



Earlier this month, we issued our Review Report F-2006-004. This dealt with a request by two persons who had made a joint complaint of discrimination to the Saskatchewan Human Rights Commission (the Commission). After the complaint had been dismissed by the Commission, the applicants made an access request under FOIP for their file from the Commission. The Commission released portions of the file to the applicants but withheld the remainder citing sections 15(1)(c) (lawful investigation) and 17(1)(b) (consultations) of FOIP. We found that some third party personal information was rightfully withheld but recommended release of many of the withheld documents in full or in part. This is accessible at www.oipc.sk.ca under *Reports* tab.

IS THAT RESTAURANT A SAFE PLACE TO EAT?

The Capital Health Region based in Edmonton has launched a pilot project that provides telephone access to the most recent health inspection reports for region restaurants. The number is (780-408-5465 (LINK)). Prior to this initiative, the only way citizens could access these reports would have been through a freedom of information access request. This project follows criticism by the Alberta Provincial Auditor and a series of articles in the Edmonton Journal newspaper.

FUTURE EVENTS

January 10, 2007 – *SK OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.). Topic: A FOIP Love Triangle! The Public Body, The Applicant and the Third Party (FOIP Part V*, 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

January 29-30, 2007 – *Health Information Privacy and Security*, Toronto, Ontario (visit http://www.insightinfo.com/conferences/upcoming.cfm)

February 1, 2007 – *What You Absolutely Need to Know About Information Destruction Policy: Risk Management and Compliance Fundamentals*, Toronto, Ontario (visit www.naidcanada.org/conference/seminar2007 for details)

February 21, 2007 – *Assessing Current Privacy Issues*, Ottawa, Ontario (visit www.rileyis.com/seminars)

February 22-23, 2007 – *Privacy Compliance – Practical Solutions for Meeting your Obligations* – Calgary, Alberta (visit www.CanadianInstitute.com for details)

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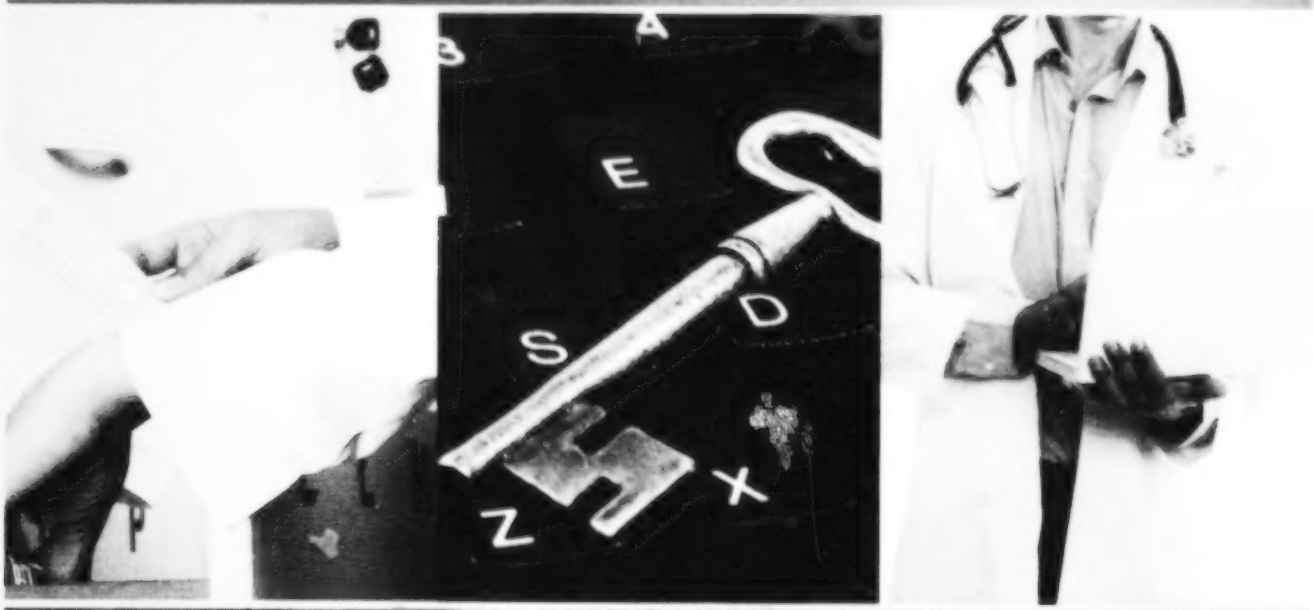
Prairie Health Information Privacy Day 2007



Demystifying Health Information Privacy Challenges

The Delta Regina - April 16th, 2007
Regina, Saskatchewan

PRAIRIE HEALTH INFORMATION PRIVACY DAY 2007

Agenda at a Glance:

8:45 – 9:00 Welcome & Opening Address
Gary Dickson, Commissioner,
Office of the Information & Privacy Commissioner of Saskatchewan

9:00 – 10:00 Recent Cases: Stories from the Trenches
LeRoy Brower, Director HIA
Office of the Information & Privacy Commissioner of Alberta

Diane Aldridge, Portfolio Officer
Office of the Information & Privacy Commissioner of Saskatchewan

Gail Perry, Manager Research & Education
The Manitoba Ombudsman Office

10:00 – 10:45 Plenary Session – PIA's

10:45 – 11:05 Break

11:05 – 12:05 Breakout Session One
a) Health Information Protection Legislation 101 - Panel

b) Who is responsible for organizational health privacy?

c) The interaction between health research & privacy: Can they co-exist?

12:05 – 1:05 Lunch

1:05 – 2:05 Breakout Session Two
a) Wrestling with Rogue Factions within Your Organization

b) Incident Response

c) Examining Information Management Challenges in the Health Sector

2:05 – 3:05 Breakout Session Three
a) Access requests versus Permissible Disclosures

b) EHRs: Current Debates and Future Considerations

c) Maintaining Privacy in Remote, Rural, or other Geographically Challenged Communities

3:05 – 3:30 Break

3:30 – 4:30 Commissioner's Panel – Current and Future Issues Surrounding the Secondary Usage of Health Information

4:20 – 4:30 Closing Remarks

4:30 End of Day